

Mr. SPEAKER.—Order, Order.

(Interruption).

Order, Order.

There is no question of privilege in it. We will go to the other work.

### PAPERS LAID ON THE TABLE.

Sri R. M. PATIL (Minister for Municipal Administration).—Sir, I beg to lay on the Table, the Annual Financial Statement (Budget) for the year 1966-67 (Revised for 1965-66) of the Bangalore water Supply and Sewerage Board as required under section 17 (3) of the Bangalore Water Supply and Sewerage Act, 1964.

Mr. SPEAKER.—The financial Statement is laid on the table.

### STATEMENT OF THE MINISTER FOR PUBLIC WORKS.

re : Introduction of Arbitration Clause in the P. W. Contracts.

†Sri VEERENDRA PATIL (Minister for Public Works).—Sir, I wish to make a statement on the clarification sought by Hon'ble Sri Siddaveerappa :

Hon'ble Sri H. Siddaveerappa, during the course of debate on the Motion of Thanks in the Legislative Assembly on 20th and 21st March 1967 sought clarification (1) as to the period of introduction of Arbitration Clause in the contract agreement in respect of major works; and (2) as to the period when the major works were entrusted to the contractor.

After verification of the records, it was found that the accepted practice in the State upto 1959 was to execute all major works departmentally. To quote a few instances, the works at K. R. S., Hulikere Tunnel, Tunga Channel Tunnel, Shimoga, and the Bhadra Reservoir masonry dam works, Tunga Masonry dam works and all other component works on these projects were executed departmentally.

The entrustment of major works to the contractors replacing the accepted practice of executing them departmentally and the introduction of the arbitration clause in the contract agreement in the form which proved not conducive to the interest of Government were introduced in the year 1959. The singular departure from the accepted practice of executing major works departmentally was of entrusting the Bhadra

†Indicate that the speeches or remarks have not been revised by the member concerned.

Tunnel-works to a construction firm and introduction of the arbitration clause in the contract agreement in the year 1958 and the reasons for the same are explained as follows :

The Bhadra Tunnel was a major work of the Bhadra Reservoir Project. The Standing Technical Advisory Committee decided in its meeting held on 30th December 1956 that the tunnel work may be executed departmentally as per the practice in vogue and also by piece-work system. But department was not equipped for this special type of work as it did not possess the required machinery. The procurement of machinery involved not only the procurement of Foreign Exchange but also considerable time. Since water was to be let out beyond the tunnel by June 1959 in view of the reservoir having been nearly completed, the tunnel work was to be completed on a priority basis. Due to the delay involved for the procurement of machinery required for driving the tunnel, the Bhadra Reservoir Special Committee decided in its meeting held on 17th November 1957 to entrust half the work to a suitable contractor and the other half executed departmentally. Tenders were accordingly invited. There was response from only one contractor namely Messrs. Hindustan Construction Company within the stipulated period. The Contractors stipulated, among other conditions, arbitration clause also. Their tender was considered by the Bhadra Reservoir Special Committee in their meeting held on 8th March 1958 and resolved that the Chief Engineer might be authorised to negotiate further with M/s. Hindustan Construction Company and come to a decision with regard to certain issues about which the department and the firm were still not agreed and also to ascertain the extent of rebate the department was likely to get if the other part of the tunnel work was also entrusted to them. It was further considered in the Bhadra Project Board meeting held on 8-4-58 and recommended among other things that the tender of M/s. Hindustan Construction Company be accepted for the entire tunnel work and further negotiations conducted at Government level with the representatives of the Company regarding the increased rebate for entrusting them with the entire work of the tunnel and the reduction in the period of completion of the tunnel. Accordingly negotiations were held at Government level on 12th April 1958 and it was decided to accept the tender of M/s. Hindustan Construction Company.

It may be mentioned here that the inclusion of the arbitration clause in the agreement to be entered into with the contractor had not been considered as a separate issue and decision taken. The Chief Engineer in his letter of 22-4-1958 forwarded a draft agreement specifying among other stipulations, an arbitration clause also. This draft was examined by Government and accepted on 16th May 1958. A copy of the agreement entered into by the Government with the contractor was also sent to the Chief Engineer with Government letter of

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17th May 1958. The arbitration clause which formed part of the agreement referred to above read as under :

"If at any time any question, dispute, or difference whatsoever shall arise between the Government and the contractor upon, or in relation to or in connection with the contract, either party may forthwith give to the other notice in writing of the existence of such question, dispute or difference and the same shall (subject to acceptance by both the parties) be referred to a single Arbitrator approved by both parties, failing which to a Board of Arbitrators, consisting of two persons, one nominated by the Government and the other by the contractor and on failure of an agreed decision by these two, to an umpire appointed by them. Providee that in matters of claims where the subject matter of the dispute does not exceed Rs. 25,000 the decision of the Engineer as a single Arbitrator shall be final and binding on the contractor and such item shall not be open to further arbitration"

According to the provisions of the Arbitration Clause mentioned above any dispute could be referred to the Arbitration, subject to the acceptance by both the parties. Because of this specific provision, there has not been a single instance of any dispute, having been referred to the Arbitration. The claims and dispute were either settled at the Chief Engineer level or Government level.

It is for the above reasons and also for the reason that this tunnel work was of a highly technical and complicated nature requiring special equipment which the P.W.D. was not in possession and also this gigantic work had to be completed within a record period of 32 to 36 months, a departure in case of Bhadra Tunnel from the accepted practice of executing the major work departmentally, as an exception, had to be resorted to in the overall interest of the State.

However, the execution of works departmentally from 1959 onwards was almost rare and the major works were entrusted to the contractors for execution. In the case of Sharavathi Valley Project, the Chief Engineer made recommendations on the basis of discussions held by the H. E. C. P. Board on 7-7-1959, one of them was inclusion of the arbitration clause in the agreement in the case of non-technical matters, the award of arbitrators being binding on the parties. This was accepted by the Government and orders issued in G. O. No. P W D 279 E S H 59 dated 27-7-1959. It may be mentioned here that the contracts entered into thereafter in respect of various other projects also contained this arbitration clause. To mention a few, the agreement entered into the case of the Kabini project on 18-12-1959 and 1-1-1960, Chincholi project on 6-5-1960, Shantisagar Aqueduct on 20-8-1960 and Ghataprabha project on 4-10-1961 contained the arbitration clause which is extracted below ;

"... Arbitration : Notwithstanding any thing contained in the clauses hereinabove, the decision of the Chief Engineer-in-

charge of the work shall be final in all technical matters and be binding on both the parties. In case of non-technical matters, either party may resort to arbitration by giving notice in writing of the existence of a dispute. On such a notice being given, the matter shall be referred to arbitration of two persons one to be nominated by the Government and other by the Contractors. Such arbitration within the meaning of the Indian Arbitration Act, 1940, or any statutory modification thereof. The award of the arbitrators shall be final and binding on both the parties on all such non-technical matters."

On a comparison the arbitration clauses stipulated in the agreement of Bhadra Tunnel work and the agreement of other works relating to Sharavathi Power Project and some other major irrigation works it may be seen that in respect of Bhadra Tunnel work arbitration can be resorted to only if both the parties agree to it, but not otherwise. But as per the agreement clause entered in the Sharavathi contracts either party can go for arbitration even if the other party is unwilling for it and the arbitration act is fully attracted,

The arbitration held, in view of the specific provisions in the agreements by and large had gone against the Government. Therefore, the Government decided to do away with this arbitration clause and orders issued on 8th January 1963.

12-30 P.M.

†Sri H. SIDDAVEERAPPA.—Sir, in view of the very lengthy statement that is made on the subject, I think, it would not be fair on my part to say anything unless I make a full study of it. I want one clarification and we may reserve our other comments for a future occasion. I want to know whether this Arbitration Clause was first introduced before Sri H. M. Channabasappa was the Public Works Minister, because, I do not know when he became Minister first. Is it a fact that it was on 1st May when Sri Nijalingappa was the Chief Minister apart from the various other clauses?

Sri VEERENDRA PATIL.—Sir, here I have said when Bhadra Tunnel work was entrusted to Hindustan Construction Company and all that. It is very easy for the hon'ble member to find out who was the Chief Minister then and who was the Public Works Minister then. I do not think it is very difficult for the hon'ble member to find it out.

Sri H. SIDDAVEERAPPA.—I will do it myself if my friend feels that I should do it.

Members Representation :—

Sri H. SIDDAVEERAPPA.—Another point is now the hon'ble Minister for Co-operation said that he was not ready to answer.

Mr. SPEAKER.—It is not included in the agenda. Only if he is ready, I will permit it informally.

**Sri H. SIDDAVEERAPPA.**—Even otherwise, May I bring it to your notice that I was informed today from your office that he would make a statement today although it is not included in the list of business.

**Mr. SPEAKER.**—Of course, it is the first time that we are meeting in this tenure and so I am trying to help as many members as possible. Sri Vatal Nagaraj came rushing to the Secretary, perhaps two minutes before One O' clock or there about today. He must not think that people are waiting only for him and he can do anything. The wording is bad. I was anxious to help him and that is why I asked him to come at 3 P.M. to my chamber. But, he thinks he is too big a man to come to me. I want to know what it is because today is the last day.

Some point was raised about privilege about some statement made by the Minister regarding Kasargod while the House was sitting. Both the Chief Minister and I, were out and the House was not sitting. I must point out that it has been ruled more than once that it does not amount to a breach of privilege. Therefore, if members could come to me, I can save lot of time of the House for more useful work. But they judge for themselves, they evince some grievance and raise it here.

**Sri H. SIDDAVEERAPPA.**—If you permit me, I will read that letter also.

**Mr. SPEAKER.**—I am not permitting.

**Sri S. SIVAPPA** (Sravanabelagola).—Sir, regarding Sri Vatal Nagaraj's point, though it is not a matter of privilege, it is a matter of convention. On previous occasions, whenever statements were made on matters of policy, you have said that it is better that they should be made on the floor of the House. This is a burning question no doubt. The Ministers can make such statements but it is better to make them on the floor of this House so that the House must sieze of such important issues and then it must go to the public. Now, they are ignoring the importance of the House. That way, they can do anything. This is not the first time that it is done; you have directed them several times. Your directions are observed in violation.

**Mr. SPEAKER.**—Hon. Member Sri Sivappa is the first in violating my ruling by criticising it. (laughter) He is trying to support something which is not supportable at all. He is trying to raise a new point which he should not do. The point that Sri Krishnan thought that it was a question of privilege, and I was throwing it out summarily. Even if it is a question of privilege, I cannot allow it on the Floor. Therefore, I asked Sri Vatal Nagaraj to meet me at 3 O'Clock so that I may read it.

*(Sri Vatal Nagaraj rose to speak)*

If the member gets up like this, I will ask him to retire from the House. After all, when I am trying to help the members, if they do not consider, what is the use? What is the purpose of fixing the Agenda? Are we here for conversation? Therefore, the privilege question does not arise. Even the content of the letter is that I must ask or the House

must ask—I do not know who—because something is said about a policy matter, with regard to certain things which are said about Kasargod issue, because lot of members were present there. Do you want to raise it as a matter of privilege? Nobody is thinking of the procedure.

**Sri S. SIVAPPA.**—Sir, that matter was referred to in the Governor's Address and he should have replied here.

**Mr. SPEAKER.**—It is only after the discussion on the Address in this House he made that statement.

**Sri M. S. KRISHNAN.**—When the matter is already referred to the One Man Commission, we would like to know if the Chief Minister can go and speak about the matter and that he should enter into negotiation? That is the question of privilege.

*(Sri Vatal Nagaraj rose to speak)*

**Mr. SPEAKER.**—Order, order. I wanted to understand and therefore I asked him to come to me. If the member thinks that he cannot come to me, I am in the least unhappy. But, I will not certainly allow any body to violate the rules. If the rules are to be ignored, then, they must come to me and help me to solve the problem. But this will be a sort of dictation which will not be relished by the House or anybody. With regard to the request of Sri H. Siddaveerappa, I was trying to help the members because members are not assembling tomorrow. It should not be felt that because some letters are sent they should be read. How does it react?

**Sri H. SIDDAVEERAPPA.**—It does not mean that. I am sorry. What I said is, it will react if the members of the treasury benches are not responsive. We cannot find fault with it.

**Mr. SPEAKER.**—I will find out.

**Sri H. SIDDAVEERAPPA.**—I have a representation to make. Just as it is prevailing in the Parliament, in view of the fact that sometimes many things inspite of our request, have not been brought in time, something like the "Zero hour" may be developed where members may be enabled to raise points very soon after the Question Hour before the regular business for the day commences. We cannot ventilate the grievances otherwise. We can ventilate the grievances to the House when it is in session. If we do not have that opportunity and when important matters which we would like to bring to the notice of this cannot be brought up within the four corners of the rules, then it will be very difficult to function effectively to represent our constituencies. Therefore, I make a request to you to allow a convention to develop in this House whereby a "zero hour" may be permitted soon after the Question Hour and that would give us an opportunity to express whatever point we have, within that period.

**Mr. SPEAKER.**—A request has been made to permit a convention to raise points at a period styled as zero hour. This concept of zero hour is really something strange and unacceptable to the parliamentary procedure. I do not know what is contained in the mind of the hon'ble

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member. All that I can gather is that certain things, which have been developed may be taken and certain things on which clarifications are required may be permitted. I do not know whether he means that if there is delay and it is avoidable, there are ways and ways of avoiding delay. It will be my endeavour to help to avoid delay. If it is a question of clarification, I think I have been over indulgent in permitting clarifications, at times not perhaps rigidly adhering to the rules. The idea of zero hour which is talked of in some press or elsewhere, I am certainly not for it and without any convention. If the House wants to have, the House may do so, I will not be a party to it.

It is right time for me to remind the House of a promise I made that I will appoint a committee to go into amendments for the rules. The concept of zero hour is something which is not found in the list. If for zero hour, one hour is to be allotted without its being reckoned in the business list, it passes all comprehension as to how we can do it. We are not able to give even 10 minutes to a call attention notice. Even if there is half an hour debate, we are not able to give time. So to give one hour is something atrocious.

Sri H. SIDDAVEERAPPA.—In the name of democracy many atrocities are permitted. This zero hour is not a figment of imagination of mine. It is permitted by the Parliament. I have seen it in the Parliament, sitting in the galleries, where members are permitted to raise questions which are not listed in the agenda. That would help us to raise some questions of public importance and enable us to bring them to the notice of this House. We will have an opportunity. You seem to be allergic to the word "zero hour" hence you may call it any name. Therefore, when you say that you are appointing a committee as promised by you, I make a submission that you may kindly appoint at the earliest with a request or command that they should give a report within 15 days so that it may be brought before the House when we meet next and that should be given preference over other matters. If you may be called by any name. What all we want is, an opportunity wherein we can express ourselves.

May I say as an illustration here, that I wanted to raise an important problem under rule 63. Unfortunately I have not been able to get an answer. The importance of it is, as we all know, a new Agriculture Produce Market Act has been passed with a view to help the growers. We have been saying that the grower must have a fair return and with that object in view we have said that the president of the society should be only an agriculturist. Now the Government are permitting elections to take place under the old Act where traders can come as presidents. That cuts at the very root of the Act. May I say that nowhere it is said that the rules must be framed before an Act comes into force. By way of illustration I may say that the Mysore State Khadi and Village Industries Act was passed and rules were not framed for seven years. But the Act was in force. Therefore, in view of these

things, this point of "zero hour" may be developed so that members can make use of the opportunity. Even now I make a request that the Minister for Co-operation may examine and see that these elections are stopped in the interest of agriculturists and growers.

Sri S. R. KANTHI (Minister for law).—Sir, I perfectly agree with your view. There are difficulties with the Government. The first difficulty is if members raise any question it will be difficult for the Government to answer. Take for instance the present case. The minister has no information. Not that he is not prepared to supply information but it requires time. If such questions are put under one name or the other, it will be impossible for the Government to reply and it will be an opportunity for the opposition for cornering the Government. At the same time it cannot be allowed. If they give notice then only we can reply ; otherwise it will not be possible.

*(Interruption)*

Mr. SPEAKER.—Order, order. Should I allow "zero hour" to be developed immediately.

Sri S. SIVAPPA.—The Hon'ble minister is saying that it is an opportunity to the opposition members to corner the Government. It is our duty to corner them and it is our duty to get them ready with answer. If the answers are not readily available they can answer the next day. That does not mean that they must be ready with answers. So, in a way the Hon'ble Minister for Law justifies the need for "zero hour" because he says that he is afraid that we are going to corner them.

Mr. SPEAKER.—Now, members are trying to persuade me to take a course of action but they are doing it in a wrong way. If they want persuasion, members must have patience. The hon'ble member Sri Siddaveerappa has made the requests. The first request is to appoint a committee immediately. I do it now alone.

### **Motion to Constitute a Committee to Consider the Rules of Procedure and Condu't of Business in the L. A.**

Sri S. R. KANTHI.—I move :

"That a committee may be constituted consisting of the following members to consider the Rules of Procedure and Conduct of Business in the Legislative Assembly and to suggest suitable amendments thereto :"

Speaker  
Deputy Speaker  
Chief Minister  
Minister for Law  
Sri S. Sivappa  
Sri H. Siddaveerappa  
Sri S. Gopala Gowda  
Sri N. Huchmasthi Gowda